Murray-Aynsley, J.—In this case the Respondent was before the Magistrate on three charges of cheating. The facts show that in the prosecution of a fraudulent design he obtained money on different occasions. The Magistrate relying on Section 71 of the Penal Code convicted the Respondent on only one charge. In this I think he was wrong. I consider that each time he obtained a sum of money he committed a fresh offence, and therefore he should have been convicted on each of the charges.

The Magistrate sentenced the Respondent to one month's Rigorous Imprisonment. The Deputy Public Prosecutor contends that this is inadequate. I agree and order that the sentence be increased to one of three months rigorous imprisonment to date from the original conviction.

Appeal allowed—sentence enhanced.

[ORIGINAL CRIMINAL JURISDICTION]

CUSSEN, J.

August 31, 1939.

PUBLIC PROSECUTOR

v.

JOHN ALIAS ARULAPPAN AND ANOTHER.

[SELANGOR CRIMINAL TRIAL No. 40 of 1939]

Criminal Procedure Code (Cap. 6), S. 113 (iii)—Evidence Enactment (Cap. 10), Ss. 24, 25, 26 and 27—Statement made during investigation—Discovery of fact—test of Admissibility of Statement.

Where a fact is discovered as the result of a statement made by an accused person during investigation under S. 113 (iii) of the Criminal Procedure Code, the admissibility or otherwise of the statement depends not upon the truth of its contents but upon its voluntary character.

CRIMINAL TRIAL.

The two accused in this Trial were charged with murder an offence punishable under section 302 of the Penal Code.

At the Preliminary Enquiry the Assistant Superintendent of Police in charge of the investigation tendered in evidence a statement made by the Second Accused during the investigation under the provisions of section 113 (iii) of the Criminal Procedure Code (Cap. 6). In that statement she related the circumstances in which she saw a tin containing jewellery belonging to the deceased being buried. As a consequence the tin and jewellery was later recovered by the Police at the spot pointed out by the Second Accused.

The Judge, during the hearing of the Trial, held that the statement was admissible.

T. D. Wallace, Assistant Legal Adviser for Public Prosecutor.

G. W. de Silva for 1st Accused.

R. P. S. Rajasooria for 2nd Accused.

Cussen, J.—In connection with the admission of the statement made by the 2nd accused I think it is desirable that I should state the reasons why I have admitted that statement in full—at least the part in question. It is important particularly because of the passage referred to in *Ameer Ali's* commentary, a work which is so frequently quoted in the Courts. That passage states that the reason for the admission under section 27 Evidence Act of the information or statement is that the discovery of the fact is a guarantee of the truth of the statement. I disagree with that. In my opinion the principle, the reason for admissibility under that section is that the discovery of the fact is a sufficient guarantee or assurance of the voluntary character of the statement. That I think is evident from an examination of the preceding sections, 24, 25 and 26, because it is clear that the principle on which the law considers the question of the admissibility or not of statements made by accused persons is not the truth of the contents of the statements but the voluntary character of the statement itself. In other words the considerations which are set out clearly in section 24. That is what the law aims to protect or safeguard, not whether the person is speaking the truth or not; it is whether the person is giving a free and voluntary statement. That is the principle of sections 24, 25, 26 and 27 of the Evidence Enactment and also of section 113 of the Criminal Procedure Code. The discovery of the fact is a guarantee or an assurance that so much of the statement as relates distinctly to the fact is a true and voluntary statement.

Statement admitted.

[APPELLATE CRIMINAL JURISDICTION]

RAJA MUSA, Ag. J.

May 14, 1938.

PUBLIC PROSECUTOR v. GOO KIAN.

[NEGRI SEMBILAN MAGISTRATE'S CRIMINAL APPEAL No. 8 of 1938]

Penal Code (Cap. 45) S. 379—theft—Prima facie case disclosed—acquittal of accused without calling upon defence—whether acquittal justified—Criminal Procedure Code (Cap. 6) S. 173A (ii)—technical offence—conviction need not be recorded.

On a charge of theft, the prosecution having established a **prima facie** case which, if unrebutted, would have warranted accused's conviction, a Magistrate is not